

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHEDDIE L. GRIFFIN,  
  
Petitioner,  
  
v.  
  
B. M. TRATE,  
  
Respondent.

No. 1:22-cv-01224-AWI-SKO (HC)

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS (Doc. 4)**

**ORDER DISMISSING PETITION FOR  
WRIT OF HABEAS CORPUS,  
DIRECTING CLERK OF COURT TO  
ENTER JUDGMENT AND CLOSE CASE,  
AND DECLINING TO ISSUE  
CERTIFICATE OF APPEALABILITY**

Petitioner is a federal prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On October 5, 2022, the Magistrate Judge assigned to the case issued Findings and Recommendation to dismiss the petition as successive and for lack of jurisdiction. (Doc. 4.) This Findings and Recommendation was served upon all parties and contained notice that any objections were to be filed within twenty-one (21) days from the date of service of that order. On October 21, 2022, Petitioner filed objections to the Magistrate Judge's Findings and Recommendations. (Doc. 8.)

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the Court has conducted a de novo review of the case. Having carefully reviewed the entire file, including Petitioner's

1 objections, the Court concludes that the Magistrate Judge's Findings and Recommendation is  
 2 supported by the record and proper analysis. To the extent Petitioner is attempting to pass  
 3 through the savings clause of § 2255, he has failed to demonstrate that § 2255 provides an  
 4 inadequate or ineffective remedy, since Petitioner has had an unobstructed procedural opportunity  
 5 to present his claims. In addition, to the extent Petitioner seeks relief under 18 U.S.C. §§  
 6 3582(c)(1)(A)(i) and (B)(2), the claims are successive, since he has already been denied relief on  
 7 an identical petition filed in the sentencing court.

8 In addition, the Court declines to issue a certificate of appealability. A prisoner seeking a  
 9 writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition,  
 10 and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-  
 11 336 (2003). A successive petition under 28 U.S.C. § 2255 that is disguised as a § 2241 petition  
 12 requires a certificate of appealability. *Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008);  
 13 *Porter v. Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001). The controlling statute in determining  
 14 whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

15 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district  
 16 judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit  
 in which the proceeding is held.

17 (b) There shall be no right of appeal from a final order in a proceeding to test the  
 18 validity of a warrant to remove to another district or place for commitment or trial a person  
 19 charged with a criminal offense against the United States, or to test the validity of such person's  
 detention pending removal proceedings.

20 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may  
 not be taken to the court of appeals from—

21 (A) the final order in a habeas corpus proceeding in which the detention  
 22 complained of arises out of process issued by a State court; or

23 (B) the final order in a proceeding under section 2255.

24 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has  
 made a substantial showing of the denial of a constitutional right.

25 (3) The certificate of appealability under paragraph (1) shall indicate which specific issue  
 26 or issues satisfy the showing required by paragraph (2).

27 If a court denies a petitioner's petition, the court may only issue a certificate of  
 28 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.

1 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that  
2 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have  
3 been resolved in a different manner or that the issues presented were ‘adequate to deserve  
4 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting  
5 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

6 In the present case, the Court finds that Petitioner has not made the required substantial  
7 showing of the denial of a constitutional right to justify the issuance of a certificate of  
8 appealability. Reasonable jurists would not find the Court’s determination that Petitioner is not  
9 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to  
10 proceed further. Thus, the Court DECLINES to issue a certificate of appealability.

11 Accordingly, the Court orders as follows:

- 12 1. The Findings and Recommendations, filed October 5, 2022 (Doc. 4), is  
13 ADOPTED IN FULL;
- 14 2. The petition for writ of habeas corpus is DISMISSED WITH PREJUDICE;
- 15 3. The Clerk of Court is directed to ENTER JUDGMENT AND CLOSE THE CASE;  
16 and,
- 17 4. The Court DECLINES to issue a certificate of appealability.

18 IT IS SO ORDERED.

19 Dated: January 11, 2023

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21 SENIOR DISTRICT JUDGE  
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